

FEDERAL RULES  
OF  
EVIDENCE

SUPREME COURT OF THE UNITED STATES  
**Pena-Rodriguez v. Colorado**

- ❖ **Rule 606(b) During an Inquiry into the Validity of a Verdict or Indictment.**
- ❖ **(1) *Prohibited Testimony or Other Evidence.* ...**
- ❖ **(2) *Exceptions.*** A juror may testify about whether:
  - ❖ **(A)** extraneous prejudicial information was improperly brought to the jury's attention;
  - ❖ **(B)** an outside influence was improperly brought to bear on any juror; or
  - ❖ **(C)** a mistake was made in entering the verdict on the verdict form.

SUPREME COURT OF THE UNITED STATES  
**WARGER v. SHAUERS**



# The Jury in American History

## John Peter Zenger's 1735 trial



William Blackstone noted there were two open questions in malicious libel law:

1. Does the jury or judge decide if there was a malicious libel?
1. Is truth a defense?

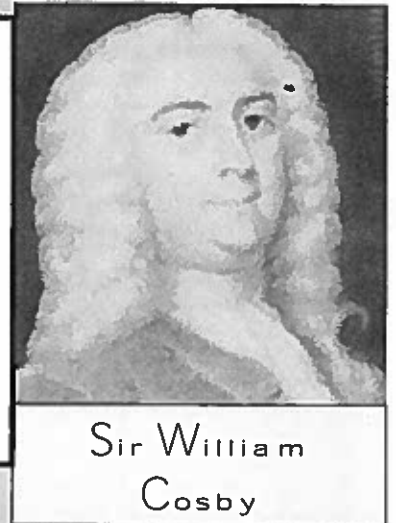


John Peter Zenger, a German immigrant, published the *New York Weekly Journal*



The New-York Weekly Specialized in attacking New York's royal governor, William Cosby.

- New York Weekly Journal compare Cosby to a monkey.
- His supporters = "pettyfogging knaves"
- Zenger refused to divulge the author.



Sir William  
Cosby



Cosby tried to have a grand jury indict Zenger, but three different colonial grand juries refused.

Cosby eventually convinced the New York Council to arrest Zenger and burn the Journal.

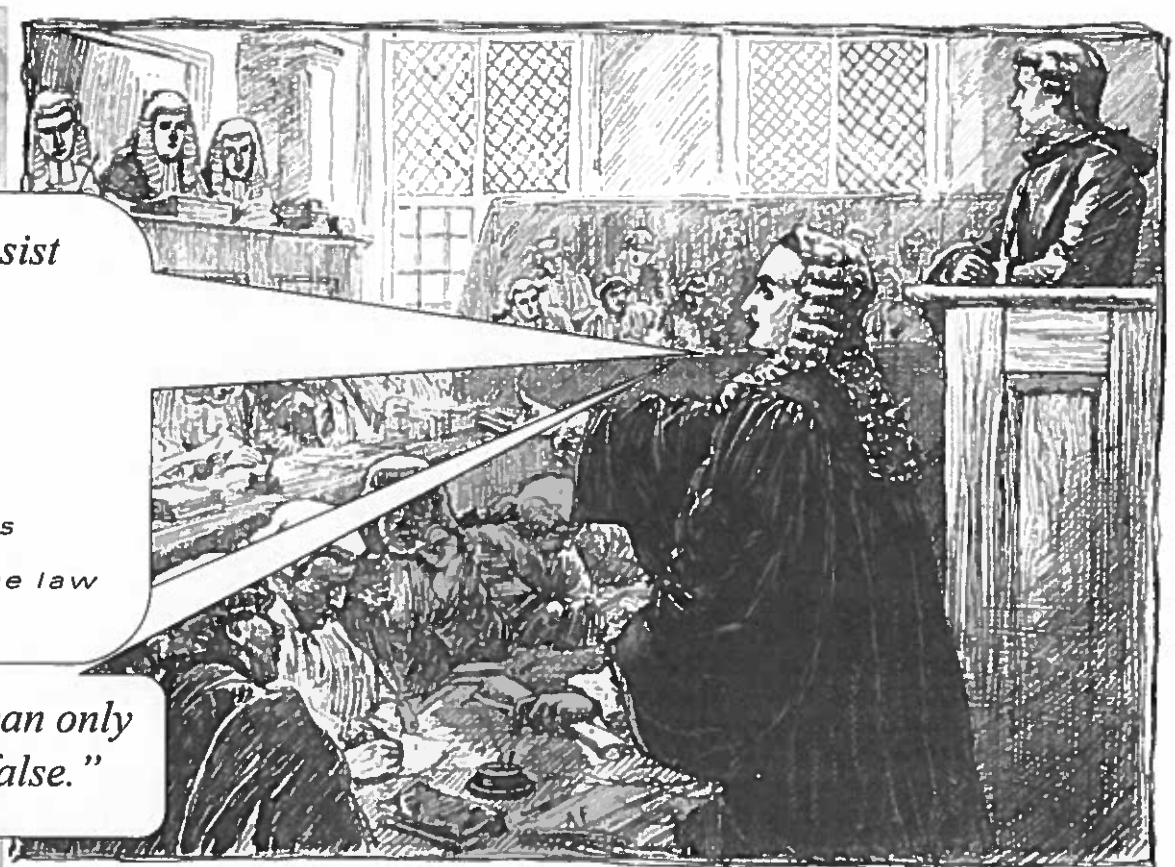
For his 1735 seditious libel trial, Zenger could not find a New York lawyer to help him.

A Philadelphia lawyer named Andrew Hamilton took his case.



Hamilton vigorously defended Zenger and the individual's freedom to criticize the government:





*"I beg leave to insist  
that the right of  
complaining or  
remonstrating is  
natural; and the  
restraint upon this  
natural right is the law  
only"*

*"those restraints can only  
extend to what is false."*



Government could only restrain what was false.

The publisher's "malicious" intent = irrelevant.

**Freedom of the Press won because of the jury and jury nullification**

decided

Truth is a Defense

The one-day trial ended with the jury deliberating for a few minutes and acquitting Zenger

Hamilton = the first "Philadelphia Lawyer"

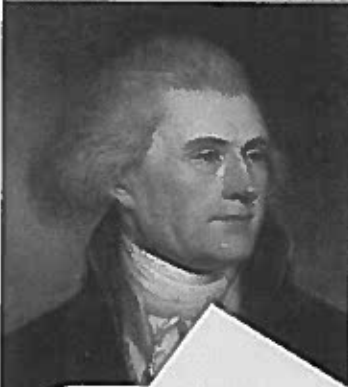
Hamilton went on to help build and initially design Independence Hall  
*The Cradle of Liberty.*



*Building the Cradle of Liberty*

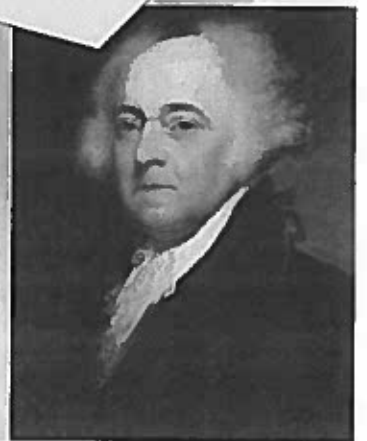


## Jury independence – Original Intent = Nullification



“It would be an absurdity for jurors to be required to accept the judges’ view of the law against their own opinion, judgement, and conscience.”

“[I]t is usual for the jurors to decide the fact, and to refer the law ...to the judges. But this division of the subject lies with their discretion only.... The jury [may] undertake to decide both law and fact.”





OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES  
**Foster v. Chatman**  
CERTIORARI TO THE SUPREME COURT OF COLORADO  
No.      Decided May 23, 2016

**Issue:** Third prong of Batson v. Kentucky - Was there purposeful discrimination?

- ❖ The defendant was convicted of capital murder and sentenced to death in Georgia.
- ❖ Peremptory strikes - four black prospective jurors
- ❖ The State exercised nine of its ten allotted peremptory strikes, removing all four of the remaining black prospective jurors.
- ❖ The defendant immediately lodged a Batson challenge, which Court rejected.

## Foster v. Chatman



Justice Roberts (7 to 1)  
Concurrence by Alito  
Dissent by Thomas

➤ **Batson first 2 prongs:**  
Before the Court, both parties agreed that the defendant demonstrated a prima facie case and the prosecutor had offered race-neutral reasons for the strikes.

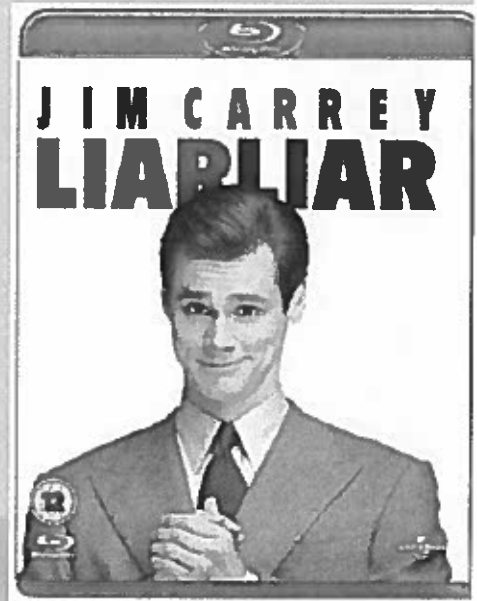
➤ **Prong 3:** Was there purposeful discrimination?



## Foster v. Chatman



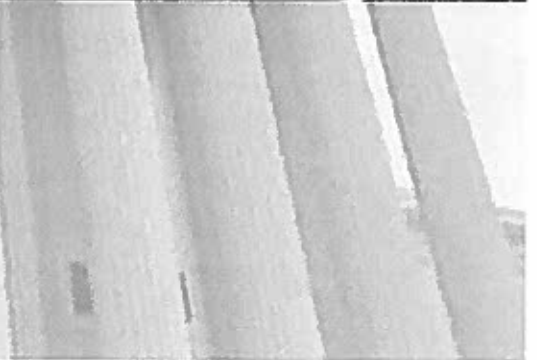
- Prosecutor told trial court one of the jurors was “listed” as “questionable” but its strike was a last-minute race-neutral decision.
- Evidence uncovered after the trial showed this statement false;
- The State specifically identified juror in advance as a “definite strike.”
- Court found “the focus on race in the prosecution’s file plainly demonstrates a concerted effort to keep black prospective jurors off the jury.”



OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES  
**BETTERMAN v. MONTANA**  
CERTIORARI TO THE CERTIORARI TO THE SUPREME COURT OF MONTANA  
No. 14–1457—Decided May 19, 2016

**Speedy trial rights and failure  
to appear**

- **Summary:** Betterman pleaded guilty to bail jumping after failing to appear on domestic assault charges.
- 
- He was then jailed for over 14 months awaiting sentence, in large part due to institutional delay.
- Argued the 14 month gap between conviction and sentencing violated his speedy trial rights.



## BETTERMAN v. MONTANA



- **Held:** The Sixth Amendment's speedy trial guarantee does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges.
- "[T]he guarantee protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges."

➤ For inordinate delay in sentencing, a defendant may have other recourse, including the Due Process Clauses of the Fifth and Fourteenth Amendments.

➤ **Open Question:** whether the speedy trial clause applies to bifurcated proceedings where at the sentencing stage facts could increase the sentencing range.

➤ E.g., capital cases in which eligibility for the death penalty hinges on aggravating factor findings





- ***Turner v. United States***, D.C. Cir., No. 15-1503, review granted 12/14/16 and ***Overton v. United States***, D.C. Cir., No. 15-1504, 12/14/16.
  
- **Issue:** Failure of Prosecutors in murder case to turn over existence of possible other suspect.
  
- **Current Legal Standard:** The evidence must be “material” under *Brady v. Maryland*, 373 U.S. 83 (1963) = “the trial would have turned out differently if the prosecutor had disclosed the evidence.”



## *Class v. United States,* No. 16-424



➤ **Issue:** Does a guilty plea waive a defendant's right to challenge the constitutionality of his state's formation?

➤ Defendant h  
parking lot.

➤ He pled guil

➤ No waiver o

➤ Defendant r  
U.S.C. 5104  
accessible, a

➤ D.C., First, &

➤ Third, Fifth

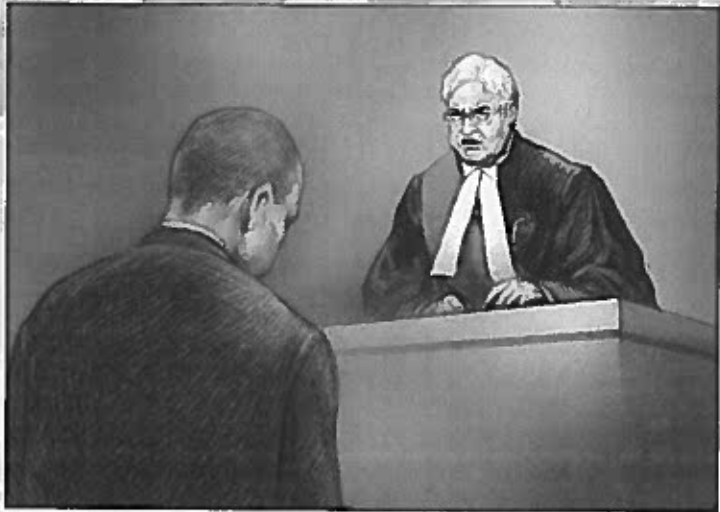


d car in a

challenges to 40  
readily  
building.

Bill of Rights  
Congress of the United States

## The 8th Amendment



## EIGHTH

### The Eighth Amendment

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

8

The first part of this amendment states that bail be fixed more than by the state, but it is the duty of the courts to fix the bail. It is a duty to make sure that justice is done to the state. The second part of the amendment has to do with the punishment of criminals. It states that the punishment of criminals shall be proportionate to the crime. It is a duty to make sure that justice is done to the state. The third part of the amendment has to do with the punishment of criminals. It states that the punishment of criminals shall be proportionate to the crime. It is a duty to make sure that justice is done to the state.

## AMENDMENT

NO CRUEL AND UNUSUAL PUNISHMENTS.





OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES

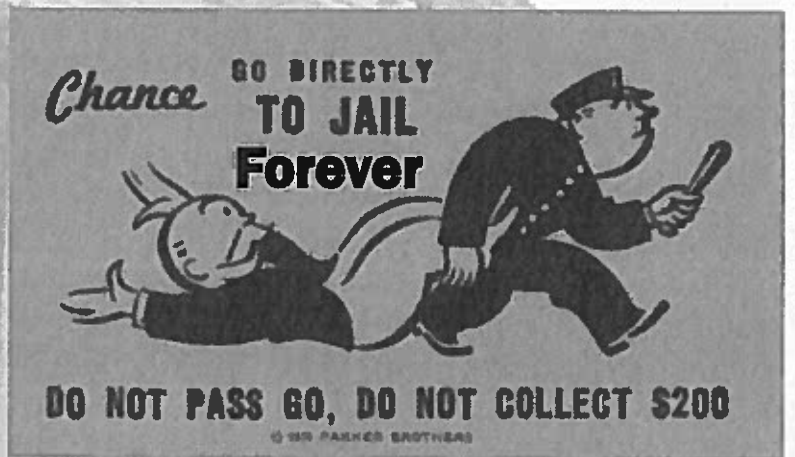
**LYNCH V. ARIZONA**

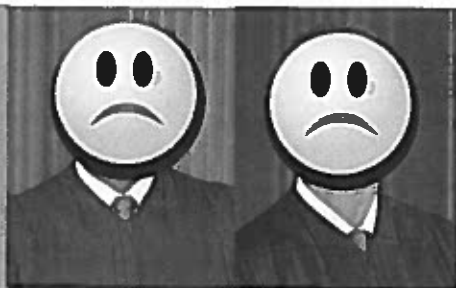
CERTIORARI TO THE SUPREME COURT OF COLORADO  
No. 15-8366 - Decided May 31, 2016

- During a home invasion robbery, Lynch and a cohort tied James Panzarella to a chair and slashed his throat.
- The first penalty phase jury could not reach a verdict. The State elected to retry the penalty phase and obtained a death verdict.

**Per curium holding:** When the state has put a capital defendant's future dangerousness at issue and the only possible sentence besides death is life imprisonment without parole, the defendant has a right to tell the jury.







## ➤ Thomas + Alito Dissent

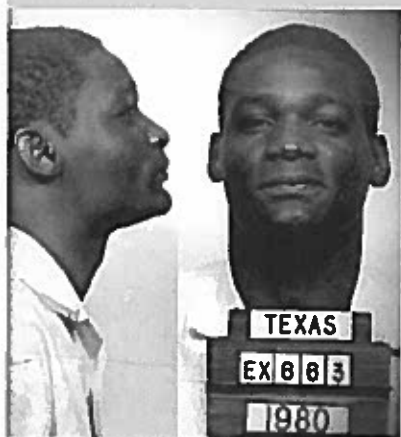
- Recitation of the facts = nothing to do with the legal issue.
- “A jury convicted Lynch of first-degree murder, kidnaping, armed robbery, and burglary, and ultimately sentenced him to death. But today, the Court decides that sentence is no good because the state trial court prohibited the parties from telling the jury that Arizona had abolished parole.”
- “Today’s summary reversal perpetuates the Court’s error in *Simmons*.”
- “The Due Process Clause does not compel such “micromanagement of state sentencing proceedings.””

OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES

**MOORE v. TEXAS**

CERTIORARI TO THE SUPREME COURT OF COLORADO

No. 1 - Decided March 28, 2017



**Summary:** Bobby James Moore was convicted of capital murder and sentenced to death. A Texas state habeas court determined that Moore was intellectually disabled and recommended that Moore be granted relief. The Texas Court of Criminal Appeals denied the recommendation for relief.

### 5-3 Justice Ginsburg

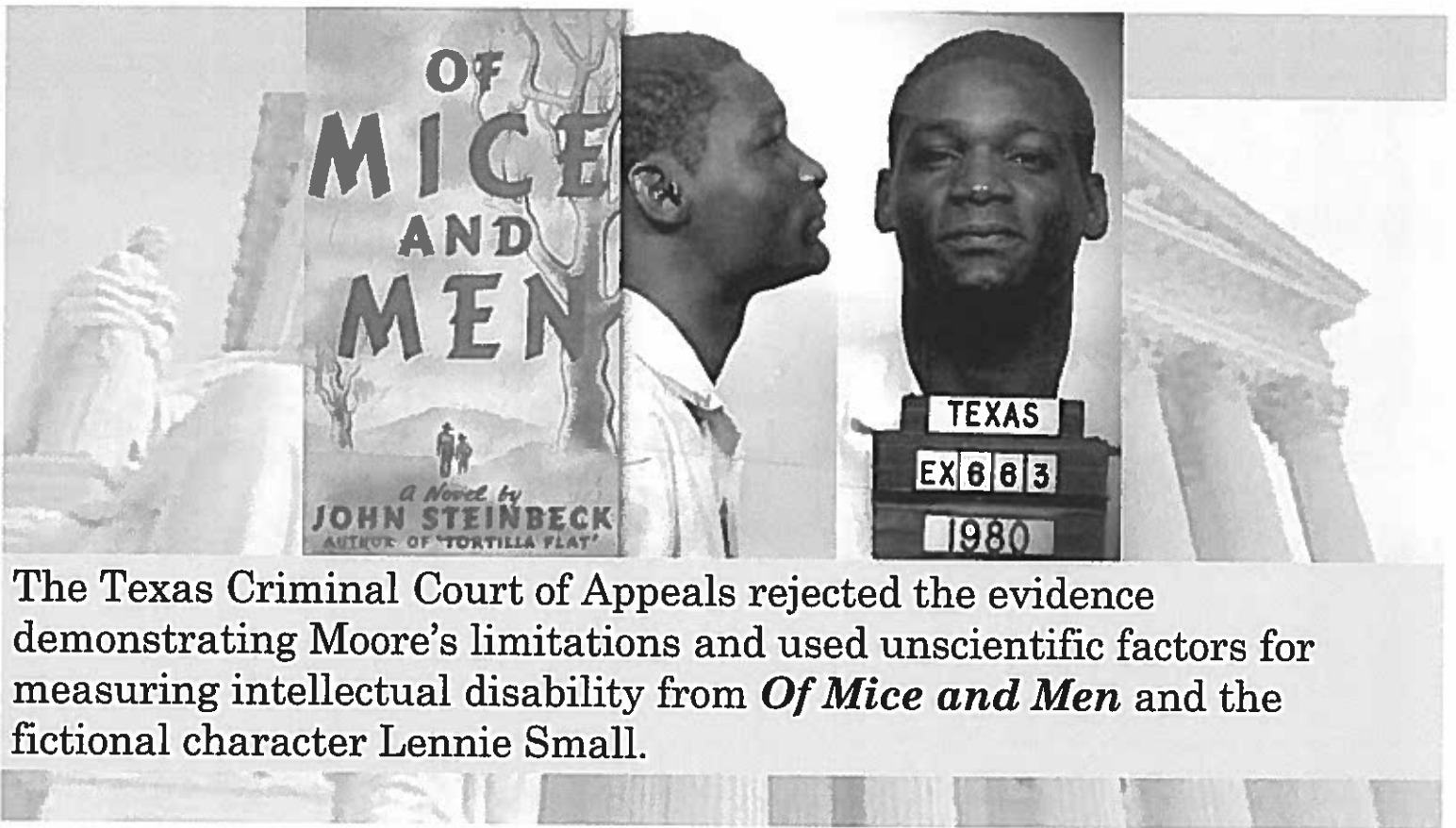
Dissent: Roberts + Alito + Thomas.)



### Held:

- The factors Texas used to determine whether a defendant was intellectually disabled and ineligible for a death sentence are not consistent with the Eighth Amendment.
- A determination of intellectual disability must comport with current medical consensus.





The Texas Criminal Court of Appeals rejected the evidence demonstrating Moore's limitations and used unscientific factors for measuring intellectual disability from *Of Mice and Men* and the fictional character Lennie Small.

OCTOBER TERM, 2016  
**RIPPO v. BAKER**



No. 16-6316 - Decided March 6, 2017



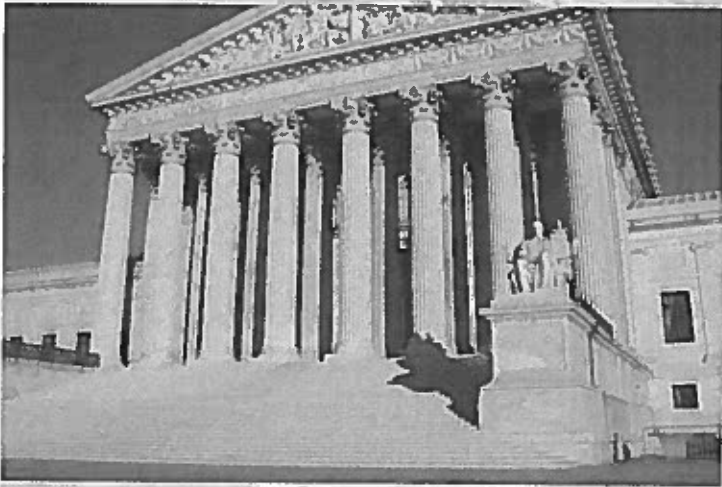
- Rippo was convicted of murdering two women and sentenced to death.
- During trial, Rippo learned the judge was the target of a federal bribery probe and the same county prosecutor's office charging him was playing a role in the judge's investigation.
- Rippo moved for the judge's disqualification under the 14<sup>th</sup> Amendment's Due Process Clause
- Trial judge declined but after the judge's indictment a different judge denied Rippo's motion for a new trial.

OCTOBER TERM, 2016  
**RIPPO v. BAKER**  
No. 16-6316 - Decided March 6, 2017

**Per Curiam:**

- 
- 
- “We vacate the Nevada Supreme Court’s judgment because it applied the wrong legal standard. Under our precedents, the Due Process Clause may sometimes demand recusal even when a judge “‘ha[s] no actual bias.’” *Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813, 825 (1986). Recusal is required when, objectively speaking, “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.””
  - “The Nevada Supreme Court did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable.”

## The Eighth Amendment and America

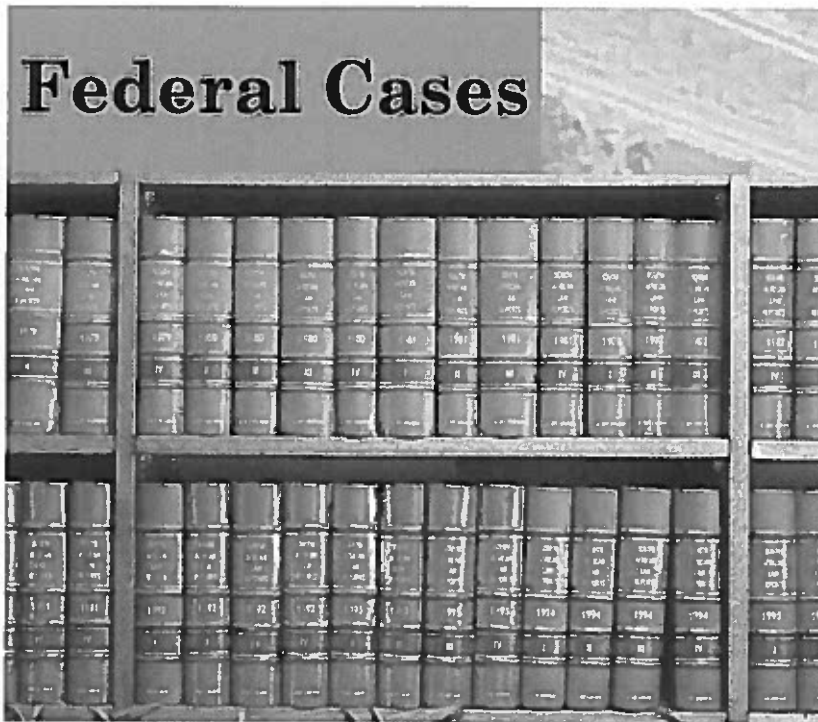


❖ The “proscription of cruel and unusual punishments ... ‘is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice.’” *Weems v. United States*, 217 U.S. at 378

❖ What is “cruel and unusual” must “draw its meaning from the evolving standards of decency that mark the progress of a maturing society” and punishment must accord with the “dignity of man.” *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958)



# Federal Cases



## How Federal Cases Are Appealed



U.S. Supreme Court

Circuit Court of Appeals

District Court

OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES  
**CAETANO V. MASSACHUSETTS**  
March 21, 2016

➤ **Per Curiam:**

- Massachusetts courts erred in interpreting *District of Columbia v. Heller* regarding stun guns.
- Conviction of woman carrying a stun gun for self-defense
- “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.”



## CAETANO V. MASSACHUSETTS



**Concurrence  
Alito + Thomas**



- Alito = the per curiam decision as "grudging"
- "The reasoning of the Massachusetts court poses a grave threat to the fundamental right of self-defense."
- "if the fundamental right of self-defense does not protect Caetano, then the safety of all Americans is left to the mercy of state authorities who may be more concerned about disarming people than about keeping them safe."





COMING  
ATTRACTIONS

## From Last Year

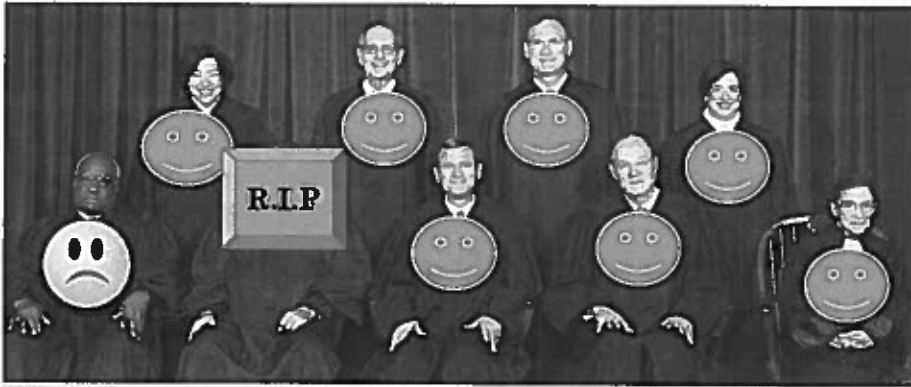
***Taylor v. United States***, No. 14-6166 (Argued February 23, 2016)

- ❖ The nexus between homegrown marijuana and federal jurisdiction over interstate commerce.
- ❖ The outcome here could limit the federal government's jurisdiction to prosecute defendants accused of a drug-related crime under the Hobbs Act, 18 U.S.C. §1951(a).

OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES  
**TAYLOR v. UNITED STATES**  
June 20, 2016

- **Summary:** Defendant was convicted under the Hobbs Act.
- Part of a gang robbing marijuana dealers.
- The trial court prevented defendant from offering evidence the dealers he targeted only dealt in locally grown marijuana.
- Thus no Federal jurisdiction under the commerce clause.
- The Fourth Circuit affirmed on the aggregate effect of drug dealing on interstate commerce





- 7-1 The Supreme Court affirmed the conviction
- Drug dealing, even if entirely intrastate, satisfies the Commerce element of a Hobbs Act conviction.

➤ *Gonzales v. Raich*, 545 U.S. 1 (2005) = Commerce Clause gives Congress the authority to regulate the national market of marijuana, including intrastate production.



- **Dissent:** Thomas = the Court expanded its interpretation of the Commerce Clause beyond Constitutional boundaries
- “weakens longstanding protections for criminal defendants.”

End



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